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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/430,687	10/29/1999	J. MICHAEL GREGSON	APPLDIG.014A	7627
20995	7590	02/07/2005	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			PATEL, AJIT	
		ART UNIT	PAPER NUMBER	
			2664	

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Candidate(s)	
	09/430,687	GREGSON, J. MICHAEL	
	Examiner	Art Unit	
	AJIT G. PATEL	2664	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 April 2004.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-24 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2664

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3,5-12,14-20,22 -24 are rejected under 35 U.S.C. 102(e) as being anticipated by Cidon et al (U.S.Pat. # 6,269,330).

Referring to claims 1,10,12,14 and 19, Cidon discloses a plurality of network analyzers (62 of fig. 1) with the first and second analyzers are in data communication (62,30,36 of fig. 1; lines 41-45, col. 10). A computer in data communication with the first and second analyzers (62,30,36 of fig. 1; lines 41-45, col. 10; testing system, i.e. computer); the computer is configured to command the two analyzers to establish link (lines 41-49, col10, agent within the testing system which controls the analyzers) and collect diagnostic data from link (80,96of fig. 1; lines 58-67, col. 11) and communicate data from first analyzer to computer (lines 58-67, col. 11), computer is at different location from the analyzers (lines 3-7, col.12; operator i.e. computer is remotely); establishing first and second analyzers that are connected to the network (62,30,36 of fig. 1; lines 41-45, col. 10); measure at least one parameter of the link (lines 5-11, col. 11; i.e. the agent which resides in the switch which connects to the analyzer); determine parameter deviation from network baseline by a predetermined threshold (lines 22-29,

col. 16, lines 43-58, col. 12, traffic generator which includes analyzer that recognizes commands from testing center, lines 14-26, col. 13, sequence and time of test sequence); issue an alert in the event that the parameter deviates from the predetermined baseline of the network (lines 48-58, col. 13; lines 22-28, col. 16).

Referring to claim 2, Cidon discloses all aspects of the claimed invention and further teaches the analyzers are placed at network boundary (lines 13-15, col. 10; 30 ports to external of fig. 1).

Referring to claims 3 and 20, Cidon discloses all aspects of the claimed invention and further teaches the network includes at least one of ATM, Frame Relay, Internet, ISDN, and SONET (lines 1-8, col. 10).

Referring to claims 5,11, Cidon discloses all aspects of the claimed invention and further teaches the first analyzer to measure at least one parameter in the link (lines 5-11, col. 11; i.e. the agent which resides in the switch which connects to the analyzer).

Referring claims 6,18,22,24, Cidon discloses all aspects of the claimed invention and further teaches the parameter includes at least one of a packet loss and latency of the link (line 5-11, col. 11, i.e. the agent which resides in the switch which connects to the analyzer).

Referring to claims 7,16,17 and 23, Cidon discloses all aspects of the claimed invention and further teaches configuring non-intrusive data into the network (lines 54-58, col. 12; 60, 130 of fig. 1).

Referring to claim 8, Cidon discloses all aspects of the claimed invention and further teaches the first analyzer is to collect baseline diagnostic data over a

predetermined duration represent a network baseline (lines 43-58, col. 12; traffic generator which includes analyzer that recognizes commands from testing center, lines 14-26, col. 13, sequence and time of test sequence).

Referring claim 9, Cidon discloses all aspect of the claimed invention and further teaches the computer issues an alert when diagnostic data deviate from baseline by a predetermined threshold (lines 22-29, col. 16, lines 48-58, col. 13; lines 22-28, col. 16).

Referring to claim 15, Cidon discloses all aspects of the claimed invention and further teaches estimating statistical average of at least one parameter for the same time, day, location (col. 14, table 1).

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 4,13 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cidon in view of Engdahl et al (U.S. Pat. # 5,691,976).

Referring to claims 4,13 and 21, Cidon discloses all aspects of the claimed invention except fails to teach the FDL between the analyzers and computer. However, Engdahl et al disclose the FDL for capturing the FDL channel data in every DS1 channel that tie to the clock lines (lines 11-14, col. 32). Therefore, It would have been obvious to one skilled in the art to use this type of link to achieve non-intrusive signal by

means by means of synchronizing the link (part of the frame within the link). One of ordinary skill in the art would have been motivated to use FDL to achieve a bit for bit comparison with a protect path to provide 1:1 fault protection in the system).

5. Applicant's arguments filed 4/8/04 have been fully considered but they are not persuasive. Applicant argued that Cidon fails to teach or suggest determining a parameter deviation from a network baseline by a predetermined threshold. However, Cidon discloses on lines 22-29, col. 16, imply that if the communication fell below the acceptable quality, i.e. threshold, the testing center generates alarms. Therefore, applicant's argument is not persuasive.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AJIT G. PATEL whose telephone number is 571-272-3140. The examiner can normally be reached on MONDAY-THURSDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on 571-272-3134. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Ajit Patel
Primary Examiner

AP